

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	WC Docket No. 11-42
Lifeline and Link Up Reform and	)	
Modernization	)	
	)	
Telecommunications Carriers	)	WC Docket No. 09-197
Eligible for Universal Service	)	
Support	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

**TELRITE CORPORATION EMERGENCY PETITION FOR EXTENSION OF WAIVER**

Pursuant to section 1.3 of the Federal Communications Commission’s (Commission’s) rules,<sup>1</sup> Telrite Corporation (Telrite or the Company) respectfully submits this Emergency Petition for Extension of Waiver (Petition) for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands.<sup>2</sup> As the Commission is aware, Hurricanes Irma and Maria caused a veritable “one-two punch” of devastation throughout Puerto Rico and the U.S. Virgin Islands, the likes of which has never been recorded. Months later, it remains difficult to ascertain the degree to which persistent power outages and circumscribed mail delivery due to missing roads and mailboxes, among other issues, continue to make recovery challenging for impacted Lifeline subscribers. To the extent the Commission has a better sense of the facts on the ground, its assessment of the situation is almost certain to be more complete than Telrite’s.<sup>3</sup> However, based on available information, Telrite

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<sup>1</sup> See 47 C.F.R. § 1.3.

<sup>2</sup> See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 17-984, ¶¶ 10-16 (WCB rel. Oct. 6, 2017) (Hurricane Maria Waiver Order); see also *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 18-102 (WCB Rel. Feb. 2, 2018) (PR/USVI Second Recertification Waiver Extension Order).

<sup>3</sup> Indeed, the purpose of Chairman Pai’s upcoming visit to the islands is “to get a firsthand assessment of the situation on the ground.” See FCC Press Release, “FCC Chairman Announces Visit to Puerto Rico & U.S. Virgin Islands in March” (rel. Feb. 21, 2018).

respectfully submits that grant of this Petition is essential to protect low-income consumers in Puerto Rico and the U.S. Virgin Islands from having their vital Lifeline service disconnected at a time when it is needed most. Indeed, de-enrollment of eligible subscribers from the Lifeline program during this emergency based on their inability to comply with technical program rules in the short-term would subject already vulnerable consumers to unnecessary endangerment resulting from the termination of essential communications services.

Telrite therefore respectfully requests that the Wireline Competition Bureau (Bureau)<sup>4</sup> expeditiously grant this Petition and extend the temporary waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission’s rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands until such time that the Bureau determines that, based on the information available to it regarding the totality of the circumstances in Puerto Rico and the U.S. Virgin Islands, lifting the waiver is in the public interest.<sup>5</sup> Telrite styles its request in this manner because it believes that the Bureau is best suited to make the decision as to when a material improvement in circumstances on the islands will obviate the need for continuation of the waiver sought herein.

## **I. BACKGROUND**

### **A. Current Waivers in Puerto Rico and the U.S. Virgin Islands**

In recognition of the catastrophic damage caused by Hurricanes Irma and Maria, the Bureau issued multiple waiver orders for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands

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<sup>4</sup> See 47 C.F.R. § 0.91(b) (authorizing the Bureau to “[a]ct on requests for interpretation or waiver of rules”); *see also* 47 C.F.R. § 0.291(a) (stating that the Bureau has delegated authority to perform all the functions described in section 0.91 of the Commission’s rules, including specifically the authority to act on requests for waiver of the rules).

<sup>5</sup> Consistent with the relief granted in the PR/USVI Second Recertification Waiver Extension Order, Telrite only seeks a waiver of the recertification rules (sections 54.405(e)(4) and 54.410(f)) for subscribers whose continued eligibility cannot be verified using an eligibility database.

between September 2017 and February 2018. First, on September 7, 2017, the Bureau waived the Lifeline non-usage and recertification requirements (sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission’s rules) for 90 days in response to a petition filed by Telrite<sup>6</sup> in anticipation of widespread power and network outages, and displacements in Puerto Rico and the U.S. Virgin Islands in the wake of Hurricane Irma.<sup>7</sup> In a subsequent order issued on October 6, 2017, the Bureau extended these waivers (and applied them to certain subscribers in Florida and Georgia) until February 28, 2018 as a result of the even more extensive damage caused by Hurricane Maria.<sup>8</sup> Third, on October 31, 2017, the Bureau extended the waiver of the recertification rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands until March 31, 2018.<sup>9</sup> Finally, on February 2, 2018 the Bureau further extended the waiver of the recertification rules for “Lifeline subscribers residing in Puerto Rico or the [U.S. Virgin Islands] whose continued eligibility cannot be verified using an eligibility database and whose anniversary dates fall between April 1, 2018 and April 30, 2018.”<sup>10</sup>

In each of these orders, the Bureau acknowledged that “strict compliance” with the Lifeline program rules would be either “impracticable” or “inconsistent with the public interest” in the wake of these historic natural disasters.<sup>11</sup> The orders also generally provide that at the expiration of the

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<sup>6</sup> See Telrite Corporation Emergency Petition for Temporary Suspension and Waiver, WC Docket Nos. 11-42, 09-197, 10-90 (filed Sept. 6, 2017).

<sup>7</sup> See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 17-860 (WCB rel. Sept. 7, 2017) (Hurricane Irma Waiver Order).

<sup>8</sup> See Hurricane Maria Waiver Order ¶¶ 10-16.

<sup>9</sup> See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Order, DA 17-1066 (WCB Rel. Oct. 31, 2017) (PR/USVI First Recertification Waiver Extension Order).

<sup>10</sup> See PR/USVI Second Recertification Waiver Extension Order.

<sup>11</sup> See Hurricane Irma Waiver Order ¶ 1; Hurricane Maria Waiver Order ¶ 2; PR/USVI First Recertification Waiver Extension Order ¶ 3; PR/USVI Second Recertification Waiver Extension Order ¶ 7.

relevant waiver period, subscribers will have additional time to comply with the usage<sup>12</sup> and recertification requirements.<sup>13</sup>

**B. Devastation Following Hurricanes Irma and Maria in Puerto Rico and the U.S. Virgin Islands**

Hurricanes Irma and Maria swept over Puerto Rico and the U.S. Virgin Islands in a period of less than two weeks last fall, leaving behind unprecedented destruction throughout the affected communities. In the months following the storms, media reports have described the gravity of the situation in Puerto Rico, including ongoing struggles for citizens to access basic necessities such as food, water, and electricity. Indeed, recent media reports suggest that more than 400,000 customers are still without electricity, and even if power is restored temporarily, the island's electric utility continues to grapple with widespread blackouts.<sup>14</sup> The degree to which mail service and other public services have been restored is unclear, as Telrite is unaware of a comprehensive source for road closures and addresses for which mail has been rendered undeliverable due to destroyed roads and mailboxes.

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<sup>12</sup> The waiver of sections 54.405(e)(3) and 54.407(c)(2) expires on February 28, 2018. At that time, "Lifeline subscribers who are subject to the non-usage rule will have 30 days to use their Lifeline service for the purposes of section 54.405(e)(3) of the Commission's rules." Hurricane Maria Waiver Order ¶ 12.

<sup>13</sup> With respect to the waiver of sections 54.405(e)(4) and 54.410(f), subscribers whose service anniversary dates fall during the waiver period will have 60 days to respond to their eligible telecommunications carrier's (ETC's) recertification efforts. For subscribers whose anniversary dates fall between September 7, 2017 and March 31, 2018, ETCs must begin the recertification process on April 1, 2018. *See* PR/USVI Second Recertification Waiver Extension Order ¶ 6. For subscribers whose anniversary dates fall between April 1, 2018 and April 30, 2018 and whose continued eligibility cannot be verified using an eligibility database, ETCs must begin the recertification process on March 1, 2018. *See id.*

<sup>14</sup> *See* Arelis R. Hernandez, "Explosion in Puerto Rico knocks out power, emphasizing grid's frailty after Hurricane Maria, Washington Post (Feb. 12, 2018) available at [https://www.washingtonpost.com/national/explosion-in-puerto-rico-knocks-out-power-emphasizing-grids-frailty-after-hurricane-maria/2018/02/12/bde7dae2-0ffd-11e8-9570-29c9830535e5\\_story.html?utm\\_term=.b1b8467c3093](https://www.washingtonpost.com/national/explosion-in-puerto-rico-knocks-out-power-emphasizing-grids-frailty-after-hurricane-maria/2018/02/12/bde7dae2-0ffd-11e8-9570-29c9830535e5_story.html?utm_term=.b1b8467c3093).

While featured less prominently in the media, the devastation in the U.S. Virgin Islands was equally palpable. Indeed, St. Croix, St. John, and St. Thomas remain part of the “disaster area” identified in the Commission’s most recent status report for areas impacted by Hurricane Maria, with more than 13 percent cell sites remaining out of service on all three islands as of February 23, 2018.<sup>15</sup> With respect to the U.S. Virgin Islands, there is less information available regarding the hardships residents continue to face in the wake of the storms and a protracted recovery period.

Because there is reason to believe that the situation in the U.S. Virgin Islands is comparable to that in Puerto Rico, Telrite includes the U.S. Virgin Islands in its request for additional relief. The Commission/Bureau may have at its disposal a better accounting of the facts in both places. However, because it is Telrite’s sense based on media coverage and anecdotal evidence based on contacts with people on the ground in Puerto Rico that the impacts of the storms continue to make normal everyday life difficult and that the situation has not improved materially since the Bureau’s most recent grant of relief on February 2, 2018, Telrite respectfully submits that the situation requires additional relief.

## **II. REQUEST FOR EXTENSION OF WAIVER**

Telrite supports the Commission’s efforts to curb waste, fraud and abuse in the Lifeline program and expends significant time and resources to comply with the Lifeline program rules, including the non-usage and recertification requirements. However, neither the Commission’s rules nor its orders related to the Lifeline program contemplate potential difficulties that consumers may have in keeping track of Lifeline service usage requirements (including during the “cure” period) or responding to recertification requests following a natural disaster such as Hurricanes Irma and Maria. Given the magnitude of potential harm to low-income consumers that could result if the

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<sup>15</sup> See FCC, “Communications Status Report for Areas Impacted by Hurricane Maria” (Feb. 23, 2018).

non-usage and recertification rules are routinely enforced against Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands in the midst of this lengthy and arduous recovery period, Telrite respectfully requests that the Bureau extend the temporary waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands until such time that the Bureau determines that, based on the information available to it regarding the totality of the circumstances in Puerto Rico and the U.S. Virgin Islands, lifting the waiver is in the public interest.<sup>16</sup>

Without the requested waiver extension, significant numbers of Lifeline subscribers could be de-enrolled from Lifeline at a time when they need essential communications service the most, starting this April. As noted above, with respect to Puerto Rico, hundreds of thousands of residents remain without reliable access power almost six months after the storms. Damage to homes and other infrastructure such as roads also continues to disrupt daily life throughout the island, including mail delivery.<sup>17</sup> Communities in the U.S. Virgin Islands are facing similar destruction and disruptions.<sup>18</sup>

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<sup>16</sup> With respect to the recertification rules (sections 54.405(e)(4) and 54.410(f)), Telrite only seeks a waiver for subscribers whose continued eligibility cannot be verified using an eligibility database. Consistent with the previous waiver orders, the extension should allot Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands 30 days to meet Lifeline program usage requirements, plus a 15-day cure period, and 60 days to complete recertification after the waiver period.

<sup>17</sup> Telrite understands that while post offices generally are operational, mail delivery remains a challenge because many roads and homes were destroyed during the storms, and even among the homes that remain standing, many are significantly damaged such that the owners or occupants have been forced to seek shelter elsewhere, and may not be receiving mail at their temporary address.

<sup>18</sup> *See, e.g.,* Letter from Michael T. Prior, President & Chief Executive Officer, ATN International, Inc., to Hon. Ajit V. Pai, Chairman, Federal Communications Commission, WC Docket No. 10-90 et al. (filed Feb. 13, 2018) (noting that ATN's network recovery has been slower than expected "due to a variety of financial and logistical constraints as well as the general lack of reliable power in the USVI until this past month"). If commercial power continues to be unreliable, it is almost certain that consumer power sources are still compromised even further. *See also* "Full Text of Gov. Mapp's State of the Territory Address," St. Thomas Source (Jan. 23, 2018) *available at*

Telrite respectfully submits that under these conditions, it is both unrealistic and counter to the public interest to strictly enforce the Lifeline recertification rules in Puerto Rico and the U.S. Virgin Islands in the short term. Indeed, during this recovery process, while some subscribers may rely on and value their Lifeline service even more than before, others may not use their Lifeline service simply because they have no means of charging their devices without electricity at home. Continued lack of power is particularly prevalent in communities outside of urban centers such as San Juan, where many of Telrite's subscribers reside. Moreover, absent reliable mail delivery, it will be all but impossible for ETCs to send notices regarding recertification to subscribers with any degree of certainty that the notices will actually reach them. Return of such notices (with proof of eligibility in Puerto Rico) is equally uncertain. As it stands currently, ETCs will be required to begin the recertification process on March 1, 2018 for the following subscribers: (1) subscribers whose anniversary dates fall between April 1, 2018 and April 30, 2018 and whose continued eligibility cannot be verified using an eligibility database; and (2) subscribers whose recertification date is May 1, 2018 or later.<sup>19</sup> At this point, there is no indication that the mail systems or power grids in Puerto Rico and the U.S. Virgin Islands will be sufficiently functional within the next few days such that it would be reasonable to expect recertification notices to reach affected subscribers.

Telrite therefore respectfully submits that, in light of this ongoing and uncertain recovery period, an additional extension is necessary. To be clear, however, an extension of the waiver is equally important for low-income consumers in the U.S. Virgin Islands, as the destruction and

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<https://stthomassource.com/content/2018/01/23/14825/> (noting, for example, that \$420 million in property and casualty insurance claims have been disbursed, representing approximately 30 percent of claims).

<sup>19</sup> See PR/USVI Second Recertification Waiver Extension Order ¶ 6.

inability to obtain basic necessities and services on these islands appears to be of a similar magnitude as in Puerto Rico.

### **III. GOOD CAUSE EXISTS TO EXTEND THE WAIVER**

The Commission may waive any of its rules for good cause shown,<sup>20</sup> and on delegated authority, the Bureau may waive the Commission's rules based on the same standard.<sup>21</sup> Discretion to waive a rule may be exercised where the "particular facts make strict compliance inconsistent with the public interest."<sup>22</sup> Hardship, equity or more effective implementation of overall policy may also be considered.<sup>23</sup> In short, grant of a waiver request is justified when the public interest would be served by such action.

The Commission consistently has acknowledged the need for low-income consumers to have access to critical communications services during and after a catastrophic natural disaster.<sup>24</sup> In issuing the various waiver orders between September 2017 and February 2018, the Bureau

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<sup>20</sup> See 47 C.F.R. § 1.3.

<sup>21</sup> See 47 C.F.R. § 0.91(b); see also 47 C.F.R. § 0.291(a).

<sup>22</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular).

<sup>23</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>24</sup> In 2005, the Commission established a temporary Lifeline program to provide relief to victims of Hurricane Katrina who were "without telecommunications service, unable to contact loved ones, make new living arrangements, or find post-hurricane employment." See *Federal-State Joint Board on Universal Service, Schools and Libraries Universal Service Support Mechanism, Rural Health Care Support Mechanism, Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 02-60, CC Docket No. 02-6, WC Docket No. 03-109, Order, FCC 05-178 (2005). The Commission's actions following Hurricane Katrina reflect the general truth that "poor people are disproportionately impacted by natural disasters." See *Addressing the Risk of Waste, Fraud and Abuse in the FCC's Lifeline Program: Hearing Before the S. Committee on Commerce, Science, and Transportation*, 115<sup>th</sup> Cong. (Sept. 6, 2017) (Statement of Jessica J. Gonzalez, Deputy Director & Senior Counsel, Free Press and Free Press Action Fund) (internal cites omitted). And in the aftermath of Hurricane Maria, Chairman Pai has made clear that despite the "catastrophic impact" of the storm, "the FCC stands ready to do whatever [it] can to help." See FCC Press Release, "Chairman Pai Statement on Hurricane Maria" (Sept. 21, 2017).

acknowledged that good cause existed for temporarily granting relief from the Lifeline recertification requirements in Puerto Rico and the U.S. Virgin Islands, finding that “strict compliance” with the Lifeline program rules would be either “impracticable” or “inconsistent with the public interest” in the wake of these historic natural disasters.<sup>25</sup> Sadly, the damage sustained in Puerto Rico and the U.S. Virgin Islands by Hurricanes Irma and Maria has resulted in lengthy recovery processes that remain ongoing, and Telrite has been unable to discern a material improvement in circumstances since the Bureau’s last grant of waiver relief on February 2, 2018. Telrite therefore respectfully submits ample good cause also exists to extend the relief from the usage and recertification requirements until such time that the Bureau determines that, based on the information available to it regarding the totality of the circumstances in Puerto Rico and the U.S. Virgin Islands, lifting the waiver is in the public interest. Granting this Petition would serve the public interest because it would avoid the significant harm and endangerment to consumers that would be caused by de-enrolling Lifeline subscribers in Puerto Rico or the U.S. Virgin Islands simply because they cannot strictly adhere to the Commission’s usage or recertification requirements during and in the recovery period following an unprecedented natural disaster.

#### **IV. CONCLUSION**

For the foregoing reasons, the Bureau should grant this Petition and extend the temporary waiver of sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission’s rules for Lifeline subscribers in Puerto Rico and the U.S. Virgin Islands until such time that the Bureau determines that, based on the information available to it regarding the totality of the circumstances in Puerto Rico and the U.S. Virgin Islands, lifting the waiver is in the public interest.

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<sup>25</sup> See Hurricane Irma Waiver Order ¶ 1; Hurricane Maria Waiver Order ¶ 2; PR/USVI First Recertification Waiver Extension Order ¶ 3; PR/USVI Second Recertification Waiver Extension Order ¶ 7.

With respect to the recertification rules (sections 54.405(e)(4) and 54.410(f)), Telrite only seeks a waiver for subscribers whose continued eligibility cannot be verified using an eligibility database.

Respectfully submitted,

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